

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Penalty)
Relief of:)
)
)
FERNALD W. WENTZELL, M.D.)
)
Physician's and Surgeon's)
Certificate No. C 36925)
)
Respondent)
_____)

File No. 10-1997-71118

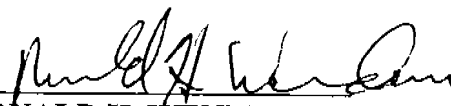
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 16, 2003.

IT IS SO ORDERED April 16, 2003.

MEDICAL BOARD OF CALIFORNIA

By: 
RONALD H. WENDER, M.D.
Chair, Panel B
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty
Relief of:

FERNALD WILLIAM WENTZELL, M.D.
3230 Waring Court, Suite D
Oceanside, CA 92056

Physician's and Surgeon's
Certificate No. C 36925

Petitioner

Case No. 10-97-71118

OAH No. L2003010371

PROPOSED DECISION

On February 18, 2003, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Heidi Weisbaum, Deputy Attorney General, represented the Attorney General.

Richard Barton, Attorney at Law, represented petitioner.

The matter was submitted on February 18, 2003.

FACTUAL FINDINGS

1. On June 28, 2002, petitioner signed a Petition for Penalty Relief and submitted to the Medical Board of California (hereafter, "Board"). Petitioner sought termination of his probation.

2. On March 12, 1976, the Board issued Physician's and Surgeon's certificate No. C 36925 to petitioner. He attended medical school at Dalhousie University in Nova Scotia and completed a residency in obstetrics and gynecology at the University of Tennessee in 1976. He became board certified in that field in 1984.

3. On August 5, 1998, the Board's Executive Director filed an accusation against petitioner. It alleged that in his care and treatment of one patient, petitioner committed gross negligence, repeated negligent acts, was incompetent, and his medical records were inadequate.

Petitioner and the Board entered into a Stipulation in Settlement and Decision. Petitioner admitted the allegation concerning inadequate medical records and did not contest the other allegations in the accusation. The disciplinary order called for revocation of petitioner's license, stayed, and probation for a period of five years on conditions which included a P.A.C.E. assessment and program, an educational program of 25 hours per year for the five years of probation (a total of 125 hours) with an emphasis in the area of breast cancer diagnosis and treatment, payment of \$3,140.00 in costs and payment of monitoring costs, and the Board's standard terms and conditions. The Board adopted the Stipulation in Settlement and Decision on May 5, 1999, and it became effective on June 5, 1999.

4. The accusation was based upon a malpractice action brought by a patient which resulted in an award of \$554,093.00 to her and a \$100,000.00 award to her husband. The accusation alleged the following: petitioner delivered the patient's third child in 1991 and thereafter saw her on a six-month basis. On August 11, 1992, a note indicated the patient was in for a pap smear and a right breast lump. Petitioner's notes were sketchy and he did not record any details about the lump. He told her he thought the area was probably a result of her lactating, that it could be a clogged duct, and there was nothing to worry about. He recommended a mammogram but did not make arrangements to see the patient again regarding the breast problem and did not follow up on whether she obtained a mammogram.

Petitioner saw the patient again about six months later. She complained about the lump getting larger, but his notes did not mention such a complaint. Petitioner told her the problem was related to breast feeding. The next visit was six months later. The patient told petitioner the lump was getting bigger. His notes were sketchy but contained a drawing of the right breast with an elongated area noted on it. He ordered a mammogram which disclosed dense lactating breasts without good evidence of malignancy and no radiographic representation of the palpable lump. Petitioner's office told the patient the mammogram results were negative and she had nothing to worry about. Petitioner did not refer her to a surgeon for evaluation for biopsy and no follow-up was scheduled.

The next visit occurred six months later and the patient complained the lump was larger. Petitioner's notes were cursory but he diagrammed the breast. He did not measure it. He ordered a mammogram but his records did not indicate a recommendation of a surgical consultation or referral and he did not schedule a follow-up appointment. The mammogram revealed no change in breast density or any discernible mass. The mammogram was reported to the patient as normal and no follow-up was scheduled, nor was a referral made.

Nine months later, petitioner saw the patient again and diagrammed a large area of the right breast. He noted a firm lump. He ordered a mammogram and referred the patient for

surgical consultation. The mammogram disclosed a deformity strongly suspicious for malignancy, and a biopsy found a ductal carcinoma. She underwent surgery for a stage III breast cancer, radical mastectomy, lymph node dissection, chemotherapy, radiation therapy, and reconstructive breast surgery.

5. Petitioner participated in an assessment by the PACE program April 27-28, 1999. PACE did not require him to participate in any training, and certified he completed the program successfully.

6. In order to comply with the requirement of completing 125 hours of continuing education, petitioner set up a program at UCSD with Dr. David Easter, the director of the Cancer Center there, and with Dr. Anne Wallace, the director of the Breast Care unit. He attended the inter-disciplinary breast conference on Monday mornings and then went with Dr. Easter to his breast clinic where they would see patients for the rest of the morning. On Wednesday afternoons, he went to Dr. Wallace's clinic where they saw patients together.

According to a letter from Dr. Wallace, petitioner was involved with evaluation, diagnosis, management, and follow-up care of women with breast cancer. She felt this was a valuable learning experience for petitioner and he participated actively with them.

Petitioner testified the experience working with Drs. Wallace and Easter for more than a year was a worthwhile one and it changed how he managed patients. As a result, he learned to be more aggressive to prevent women from falling through the cracks. If he detects a lump, or a patient reports one, he now insists on a mammogram, and his office schedules the mammogram and a follow-up appointment. His office further ensures the mammogram results are received in the office and if the results indicate the patient should be referred to a surgeon, his office makes that appointment.

7. Dr. Marc Lebovits is the Chief of Staff at Tri-City Medical Center, where petitioner has held privileges for 25 years. He wrote that petitioner has for more than ten years directed and managed the OB/GYN Emergency Coverage Panel, and works well with, and is well thought of by his colleagues and staff. He chose petitioner to be his wife's obstetrician and found petitioner provided outstanding care before and after his children were delivered. He has worked with petitioner on professional committees and has found him thoughtful, fair, capable and wise.

Dr. Jerald White has practiced in North San Diego County for 34 years and has known petitioner for 26 years. He was chief of staff at Tri-City twice. He wrote that petitioner is a man of integrity and good character, and he respects his ability as a calm and responsive person. He has found petitioner to be a talented surgeon who uses good judgment, and he is extremely competent.

8. Petitioner has been involved with the Vista Community Clinic for a number of years. This clinic provides services to poor women who do not have insurance. The clinic provides pre-natal care and helps the patients secure Medi-Cal benefits. Petitioner set up a

24-hour doctors panel to deliver their babies. Petitioner no longer maintains an office practice and serves as the clinic's consultant. He helps with fundraising.

Petitioner also plans to travel to provide assistance to clinics in other countries.

9. In order to correct his deficiencies in record keeping, petitioner now dictates all his notes and he is much more comprehensive in what he records.

10. Petitioner is in compliance with all the conditions of probation.

11. The Attorney General did not oppose termination of probation.

12. Petitioner has been on probation for almost four years. He has practiced medicine in California for nearly 27 years and this is the only disciplinary action taken against him. It involved one patient. Petitioner took valuable steps to address the shortcoming shown by his care and treatment of the patient by setting up a program with two excellent physicians in the field of breast cancer. He worked with them for more than a year, seeing their patients and discussing the care and treatment of patients diagnosed with breast cancer. His assessment by PACE did not require him to participate in any further training. He has provided medical services to his community and expects to expand the help he will provide to the poor by working in other countries. In his testimony, petitioner demonstrated he has learned a valuable lesson and has made the appropriate changes in his practice to ensure his mistakes will not be repeated. It would not be against the public interest to terminate probation at this time.


LEGAL CONCLUSIONS

Cause to grant the petition of Fernald William Wentzell, M.D., for penalty relief by terminating probation was established by reason of Findings 5 through 12.

ORDER

The petition of Fernald William Wentzell, M.D., for penalty relief by terminating probation is hereby granted.

DATED: 3/12/03



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings